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TOWN CLERK, ACTON

**DECISION #10-02**

**DECISION ON THE PETITION FOR REVIEW BY POWDER MILL PROPERTIES, LLC**

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, March 8, 2010 on the **PETITION FOR REVIEW** by Powder Mill Properties, LLC pursuant to Section 10.1.1 of the Acton Zoning Bylaw seeking to overturn the Zoning Enforcement Officer's determination that the proposed renovation of the property would be a violation of Acton Zoning Bylaw at 50 Powdermill Road. Map J-3/Parcel 49.

Sitting for the Board of Appeals were Ken Kozik, Chairman, Jonathan Wagner, Member and Adam Hoffman, Alternate Member. Also present at the hearing were Scott A. Mutch, Assistant Town Planner and Zoning Enforcement Officer, Cheryl Frazier, Board of Appeals Secretary, Leo Bertolami, Manager of the Petitioner and Mark Donohoe, Acton Survey and Engineering on behalf of the Petitioner.

Chairman Kozik opened the hearing and read the contents of the file. The file contained (a) Petition For Review dated 1/19/10, (b) Interdepartmental Communication dated 1/22/10 from Scott A. Mutch, Zoning Enforcement Officer addressed to the Building Department and the applicant explaining his position that the proposed renovation of the property as shown on the Petitioner's application to the Building Department would constitute a violation of the Acton Zoning Bylaw, (c) letter from Acton Survey & Engineering, Inc. dated 1/26/10 setting forth reasons why the Zoning Enforcement Officer's determination is erroneous, (d) Memo dated 2/26/10 from law firm of Anderson & Krieger to Roland Bartl, (e) Memo from the Design Review Board dated 3/3/10, (f) Interdepartmental Communication dated 3/3/10 from Roland Bartl, Town Planner setting forth his reasons why the Zoning Enforcement Officer's determination decision is correct and should be upheld, and (g) letter from Acton Survey & Engineering, Inc. dated 3/8/10 responding to the 3/3 Interdepartmental Communication dated 3/3/10 from Roland Bartl.

Chairman Kozik then asked Scott Mutch, the Zoning Enforcement Officer to explain to the Board of Appeals his reasons for his decision. In response Mr. Mutch stated that he denied the Petitioner's application for a building permit for the reasons stated in his 1/22 Interdepart-

mental Communication, i.e. the building and site as presently located in a Flood Plain are pre-existing nonconforming and the proposed renovation would violate the Acton Zoning Bylaw because (a) the Floor Area Ratio ("FAR") will be increased on the subject property and render the property more nonconforming, and (b) the proposed renovation constitutes a "Substantial Improvement" as defined in Section 4.1.1.7 of the Acton Bylaw and therefor requires the issuance of a Special Permit under Section 4.1.8 of the Acton Bylaw.

Mr. Bertolami then explained in detail the proposed renovation, why it was necessary and how the site would be significantly improved as a result of the renovations. Mr. Donohoe restated the need to make these renovations so that the site was usable. He also disagreed with the Town's method of calculating the FAR, as well as the Town's determination that floor space cannot be replaced and "moved" to another part of the building in calculating whether the FAR had worsened or stayed the same with respect to the property's nonconformance.

The Board of Appeals, after considering the materials submitted with the Petition, together with the information developed at the hearing, finds that:

1. The Petitioner submitted an application for a building permit to the Building Department to perform substantial renovations to the building located at 50 Powdermill Road. Said renovations included (a) filling in the basement/crawlspace, (b) repairs to the foundation, (c) replacement of existing upper floor, (d) extension of the new upper floor to square off the building, (e) replacement of roof, windows, doors and exterior siding, and (f) installation of six garage doors.
2. The Petitioner's application for building permit was denied by the Zoning Enforcement Officer for reasons stated in his Interdepartmental Communication dated 1/22/10.
3. The subject property is presently located in a Flood Plain district and is pre-existing nonconforming in several respects, most notably with respect to the Floor Area Ratio.
4. The proposed renovation increases the Floor Area Ratio and therefor increases the nonconformity of the property.
5. The proposed renovation constitutes "Substantial Improvement" as defined in Section 4.1.1.7 of the Acton Bylaw and therefor requires application for and issuance of a Special Permit by the Board of Appeals.

Based on the above findings, the Board of Appeals voted to UPHOLD the decision of the Zoning Enforcement Officer that the proposed renovation of the property is a violation of the Acton Zoning Bylaw and is not allowed.

Any person aggrieved by the decision may appeal pursuant to Massachusetts General Laws, Chapter 40A, Section 17 within 20 days after this decision is filed with the Acton Town Clerk.

  
Ken Kozik  
Chairman

**TOWN OF ACTON BOARD OF APPEALS**

  
Jonathan Wagner  
Member

  
Adam Hoffman  
Alternate Member

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on May 5, 2010.

  
Cheryl Frazier, Secretary  
Board of Appeals